BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Penn Specialty Chemicals, Inc. Personal Property Account #P-008793 Tax Year 2002	)) Shelby County)

INITIAL DECISION AND ORDER

Statement of the Case

This appeal to the State Board of Equalization was brought by the taxpayer, Penn Specialty Chemicals, Inc. ("Penn"). Penn has appealed the decision of the Shelby County Board of Equalization affirming the following value and assessment determined by the Shelby County Assessor of Property ("Assessor"):

APPRAISED VALUE	ASSESSMENT
$34,792,400	$10,437,720

The administrative judge conducted a hearing in this matter on August 31, 2005. Penn was represented by Harry J. Skefos, Esq. and Brian Kelsey, Esq. The Assessor was represented by Thomas Williams, Assistant County Attorney. The record was ultimately held open until January 30, 2006 for the filing of proposed findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background

This appeal concerns the value of tangible personal property (the "property") located at a chemical processing facility in Memphis, Tennessee. The property includes machinery and equipment, furniture and fixtures, laboratory equipment, computers, vehicles and railcars.

The primary issue in this case involves whether the property should be appraised at $39,729,500 utilizing a standard valuation as contended by the Assessor or at $11,877,800 in accordance with the nonstandard valuation asserted by Penn. The nonstandard valuation claimed by Penn was based upon an appraisal report prepared by Joseph J. Mickle, ASA of Valuation Research Corporation (the "appraisal"). Penn maintained that the standard method of valuation employed by the Assessor (depreciated historical cost in accordance with the application of various standard depreciation rates) overvalued much of its property by not adequately reflecting functional and economic obsolescence.

Penn initially sought the nonstandard valuation when it timely filed its 2002 tangible personal property schedule (the "schedule") with the Assessor. The Assessor declined to accept the nonstandard valuation because she believed Penn failed to substantiate the basis of the nonstandard value at that time. Accordingly, the Assessor entered an adjusted

assessment comparable to an amount reflecting historical cost and straight-line (standard) depreciation.

At the hearing, Penn presented several issues for review:

> 1) the use of the Appraisal to value the assets listed by the Assessor in Groups 1, 2, 5, 6, and 9 of the schedule; 2) the corrected value of Penn's raw materials; 3) exclusion of the property not in use or held for use – FCHO #84, THF Plant #1 East, THF Plant #2 West, Polymeg I South, Hydrogen Plant #82 West, and the Pilot Plant; 4) valuation of the equipment used for pollution control; and 5) treatment of the assets mistakenly and incorrectly reported in Part II, Group 5 of the Schedule.
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> Additionally, the Assessor presented three issues of her own for review: 6) the effect of Penn's bankruptcy on the ownership, hence taxability, of various tangible personal property utilized by Penn; 7) the effect of other statements regarding the ownership and the valuation of Penn's tangible personal property; and 8) whether a lease dated shortly after January 1 of the relevant tax year or subsequent agreements constitute new leases with the Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Board") or merely extensions or renewals of the old leases, suggesting that if they are new leases or if they are dated after January 1 of the relevant tax year, the affected property would be taxable.

Under Tennessee law it must initially be presumed that the Assessor's standard valuation is correct:

> In the absence of evidence to the contrary, the fair market value of commercial and industrial tangible personal property, except raw materials, supplies, and scrap property, shall be presumed to be either the original cost to the taxpayer less straight line depreciation or the residual value, whichever is greater.

Tenn. R. & Reg. 0600-5-.06 (2002). However, Tennessee law also allows a taxpayer to rebut this presumption by providing sufficient evidence of its nonstandard valuation:

> Notwithstanding the provisions of Rule 0600-5-06, above, regarding standard valuation, the assessor shall place a value on the property different from the value indicated by the standard valuation provisions if there is sufficient evidence to warrant a different value and documentation of such evidence is included in the file.

Tenn. R. & Reg. 0600-5-.07 (2002).

II. The Appraisal

A. Preclusion Issue

The threshold issue before the administrative judge concerns the Assessor's contention that Penn is precluded from seeking a nonstandard valuation because it has not satisfied the two prerequisites necessary for obtaining such a valuation. According to the

Assessor, a taxpayer seeking a nonstandard valuation must request such a valuation prior to March 1 of the tax year *and* provide documentary proof, including the proposed depreciation factor, at that time. In support of this contention, the Assessor relied on the initial decision and order issued by Administrative Judge Forest Norville in *Bridgestone/Firestone, Inc.* (Rutherford Co., Tax Years 1995 and 1996). The Assessor argued that although Penn timely requested a nonstandard valuation when it submitted its schedule, Penn failed to substantiate the basis for such a valuation at that time.

Penn contended that the *Bridgestone* case is distinguishable from its appeal because *Bridgestone's* schedule was not timely filed and contained no information in support of the requested nonstandard valuation. In contrast, Penn's schedule was filed on time and contained a letter stating that the supporting appraisal was available to the Assessor upon request.[1] Moreover, Penn essentially argued that the full State Board of Equalization effectively overruled Judge Norville in *Bridgestone/Firestone, Inc.* (Order on Review, October 17, 2002).

The administrative judge finds that the full State Board of Equalization ruled in the above-cited case in relevant part as follows:

> Clearly the intent of [Tenn. Code Ann. § 67-5-902 and State Board of Equalization Rule 0600-5-.07] was to provide a mechanism for either the assessor or taxpayer to assert a tangible personal property value different from standard depreciated cost, and to assure that a nonstandard value was not implemented without adequate documentation to support it. The provisions do not specify a clear consequence of failure to supply adequate documentation at the time the nonstandard value is first asserted, and under the circumstances presented here we agree with the administrative judge that the taxpayer should not forfeit their right to assert a nonstandard value when the assessor did not request documentation at the time the schedule was filed. Had the assessor tested the assertion of nonstandard value by requesting documentation from the taxpayer at the time, we would be better able now to know whether the nonstandard value was asserted by the taxpayer in good faith.
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> Taxpayers and their representatives, charged with the knowledge of the requirement annually to share information necessary to permit an accurate assessment of their property, should not be permitted to postpone this assessment process while they cast about for some basis to vary from standard depreciated cost. Neither can it be said, however, that the present rules require a full-blown appraisal to document nonstandard value at the time the reporting schedule is filed. The Board should seek to clarify its rules if possible to better indicate what is expected of a taxpayer who asserts a nonstandard value at the time the annual report is filed with the assessor. In any event it is not in order to apply an emerging standard retroactively to the taxpayer here. Where assessors call for documentation of nonstandard value

[1] See Exhibit 1 to the Memorandum in Support of Taxpayer's Appeal; Affidavit of Angelo E. Cajili ¶ 2).

> hereafter, they should be able to expect at least such as would at least indicate good faith on the part of the taxpayer or agent asserting it.

Order on Review at 3.

The administrative judge finds in this case Penn filed a timely schedule and indicated that the appraisal supporting the asserted nonstandard valuation was available upon request. The administrative judge finds the Assessor did not request the appraisal until Penn appealed the Assessor's decision not to accept the claimed nonstandard valuation. The administrative judge finds Penn provided the Assessor with the appraisal when requested to do so. The administrative judge finds that Penn's appeal was clearly made in good faith and the supporting documentation was available to the Assessor at the time the nonstandard valuation was first requested. The administrative judge finds that merely failing to append a copy of the appraisal to the schedule should not prevent Penn from appealing the Assessor's refusal to accept the nonstandard valuation.

B. Value Conclusion

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

During the hearing, the Assessor properly stipulated that the preparer of the appraisal, Joseph J. Mickle, was an expert in the appraisal field with experience which qualified him to testify as to the fair market value of the property. Mr. Mickle reiterated the findings in the appraisal and presented it as evidence in support of his $16,752,000 nonstandard valuation of the property.[2] Having stipulated to Mr. Mickle's qualifications and not objected to his testimony as an expert, the administrative judge finds that the Assessor needed to present a rebuttal by expert opinion or in some way challenge Mr. Mickle's opinion if she hoped to prevail. In this case, however, the Assessor failed to present rebuttal expert testimony and failed to delve into the specific valuations of the various components of the property or to challenge the factual basis or appraisal methodology upon which Mr. Mickle's opinion of value was based, as set forth in the appraisal. Instead, the Assessor relied solely relied on the legal argument that the methods used in the appraisal were insufficient under *Bridgestone/Firestone, Inc.*, No. 03-888-387.OOP, A.J. Norville (Jan. 12, 1998).

The Bridgestone case, to some extent, is similar to the present case, in that both cases sought to *establish* a nonstandard value by considering the technique called **trending**. In the *Bridgestone* case, the taxpayer's appraisal (and those prepared at the direction of the

[2] Penn contended that Mr. Mickle's concluded value of $16,752,000 should be reduced by $1,887,386 to account for pollution control equipment and an additional $6,127,000 to account for property not in use or held for use. Those claimed reductions are separately addressed in parts IV and V of this opinion.

Assessor) determined the original cost of the tangible personal property by looking to the 1983 purchase of the plant by Bridgestone. The manufacturing plant was built in 1972; therefore, the 1983 original costs were original costs of *used* property and not of *new* property. The judge, relying in part on an *Appraising Machinery and Equipment* textbook, determined that a nonstandard valuation may not be established using trending when the original cost is an original cost *used* and not an original cost *new*. *Bridgestone/Firestone, Inc.*, No. 03-888-387.OOP, A.J. Norville at 17-19 (Jan. 12, 1998) (relying on *Appraising Machinery and Equipment*, Machinery and Equipment Textbook Committee of the American Society of Appraisers, John Alico, Editor, McGraw-Hill Book Company, 1989).

Unlike the appraisals in the *Bridgestone* case, however, Penn's appraisal used trending only as a check on the other two methods it used – (a) modeling and (b) liquidation value. The administrative judge recognizes that liquidation value does not normally reflect market value for Tennessee property tax purposes. As will be discussed immediately below, however, the administrative judge finds that with one exception, Mr. Mickle selected the *higher* indication of value based upon modeling or liquidation value. The administrative judge finds that like auction sales, liquidation values are not normally adopted by the State Board of Equalization as good indications of market value. This does not mean, however, that an auction or liquidation value can never be adopted as the basis of valuation.[3]

The administrative judge finds Mr. Mickle began his analysis by dividing the property into fifteen different processes and plants. For each process or plant, Mr. Mickle used trending, modeling and liquidation value to determine five different values: two based on modeling, two based on trending and one based on liquidation value. Mr. Mickle then selected one of the five indicated values and assigned a final value to each of the plants. The administrative judge finds that in no instance did Mr. Mickle select either of the values derived from trending as his final value estimate.

The administrative judge finds that on nine occasions Mr. Mickle utilized modeling, on five occasions utilized the liquidation value when that value was *higher* than the value derived from modeling, and on one occasion a value in between that derived from modeling and the liquidation value. Ironically, in this last instance, (the value of the utilities), trending would have produced a higher value than the final value chosen.

Based upon the foregoing, the administrative judge finds that Mr. Mickle essentially utilized trending as a check on the two other techniques used to determine market value. The administrative judge finds that Mr. Mickle did not rely even once on the value determined by trending in arriving at his final value estimate. For this reason, the administrative judge concludes that the holding in *Bridgestone* has no application to

[3] See *Charlie and Juanita Mayberry* (Assessment Appeals Commission, Hickman Co., Tax Year 1991) for a rare example of an auction purchase being adopted as the basis of valuation.

Mr. Mickle's appraisal. Having withstood the legal challenge to Mr. Mickle's appraisal report, the administrative judge finds Penn introduced sufficient evidence to substantiate a nonstandard value prior to inclusion of the raw materials discussed below.

The administrative judge recognizes that Mr. Mickle did not utilize the sales comparison approach in arriving at his conclusion of value. The administrative judge finds Mr. Mickle's reliance on the cost approach reasonable for at least two reasons. First, the Assessor offered no expert proof to substantiate her argument that there were adequate sales with which to determine the market value of subject property. Respectfully, the administrative judge finds that merely citing newspaper articles and/or advertisements related to listings of chemical plants or various items of tangible personal property does not constitute a sales comparison approach. Second, the administrative judge assumes that even if adequate sales data theoretically exists, exceedingly detailed analysis and significant adjustments would be necessary for such data to potentially have probative value. For example, the value of intangible assets such as goodwill would have to be extracted from the value of the going concern to arrive at the value of the personal property. The administrative judge finds that the difficulty associated with such an analysis was aptly demonstrated in the context of real property in *Wolfchase Galleria Ltd. Partnership* (Shelby Co., Tax Years 2001-2003).

III. Raw Materials

During the hearing, Penn asserted and the Assessor conceded that the value of the raw materials owned by Penn was $3,140,166 and not $8,377,238 as the Assessor had previously contended. Accordingly, the administrative judge finds that the raw materials should be valued at $3,140,166.

IV. Property Not Used or Held for Use

Penn maintained that the property located at several plants – FCHO #84, THF Plant #2 West, THF Plant #1 East, Polymeg I South, Hydrogen Plant #82 West, and the Pilot Plant – was neither used nor held for use on January 1, 2002 because it had been rendered obsolete by technological advances in chemical processing. Penn's expert witness, Joe Mickle, testified at the hearing that he valued such property which was not used or held for use at full resale value in the appraisal, as he was unaware of Tennessee law on the subject at the time.

Counsel for Penn argued that under Tenn. Code Ann. § 67-5-903 only "tangible personal property used, or held for use, in the taxpayer's business or profession" must be listed on the tangible personal property schedule to be taxed. Counsel claimed that property not used or held for use is not taxed because Tenn. Code Ann. § 67-5-901 provides "For purposes of taxation, all tangible personal property, *except. . . unused tangible personal*

property shall be classified according to its use and assessed. . .” (emphasis added by Counsel). Penn asserted that the valuation determined by Mr. Mickle should be reduced by $6,127,000 to remove the value given to this property which was not used or held for use as of January 1, 2002.

The Assessor claimed the testimony proved that the assets alleged not to be in use remain on-site and at least in some part are available or held for use. The Assessor noted, for example, that although Penn had ceased to operate the THF Plant #2 West, the plant was later reopened and the reactor was used for chemical production once again. The Assessor also asserted the proof established that Penn selectively uses certain assets “as needed.”

The administrative judge finds that Penn’s analysis failed to address Tenn. Code Ann. § 67-5-901(a)(3)(B) which provides:

> All tangible personal property which is not in use shall be classified according to its immediate most suitable economic use which shall be determined after consideration of the following:
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> (i) Immediate past use, if any;
> (ii) Nature of the property;
> (iii) Classification of the real property upon which it is located;
> (iv) Normal use of the property;
> (v) Ownership; and
> (vi) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

The administrative judge finds Penn introduced insufficient evidence to establish that the various assets were not capable of being used by Penn or some other manufacturer. Indeed, Penn conceded that it selectively used certain assets as needed. The administrative judge finds that this is best illustrated by the assets comprising the THF Plant #2 West. The administrative judge finds that although Penn considered the plant obsolete, various assets were capable of being used by Penn or some other manufacturer. In fact, Penn itself subsequently utilized the reactor and related assets some two years later.

The administrative judge finds that Penn’s claim must be rejected because of insufficient evidence on this point. The administrative judge would reach such a conclusion regardless of whether the reactor from the THF Plant #2 was utilized some two years after the relevant assessment date of January 1, 2002.[4]

V. Pollution Control Equipment

Penn maintained that Mr. Mickle’s concluded value of $16,752,000 should be reduced by $1,887,386 to account for tangible personal property being used for water

[4] The administrative judge recognizes that post-assessment date events are typically deemed irrelevant pursuant to the Assessment Appeals Commission’s ruling in *Acme Boot Co. & Ashland City Industrial Corp.* (Cheatham Co., Tax Year 1989). However, the administrative judge finds that the Commission has also expressly held in subsequent cases that post-assessment date events are admissible to confirm what could have reasonably been assumed on the assessment date. See, e.g., *George W. Hussey* (Davidson Co., Tax Year 1992). Similarly, post-assessment date events have been allowed into evidence to show a trend in values. See, e.g., *Christine Hopkins* (Assessment Appeals Commission, Franklin Co., Tax Years 1995 & 1996)

treatment which qualifies as pollution control equipment, but was erroneously reported in Part IV of the schedule. Penn asserted that although the pollution control equipment was not claimed as such before the hearing, "the Judge should exercise his discretion to consider this issue and provide equitable relief by exempting the property from taxation to the extent allowed by Tennessee law.[5]"

The Assessor opposed Penn's request because Penn had not obtained the certificate required before pollution control equipment can be assessed at its salvage value. In support of this position, the Assessor cited Administrative Judge Pete Loesch's decision in *Lemm Services, Inc.* (Personal Property Account #P-133530, Shelby Co., Tax Year 1995) for the proposition that a certificate must be obtained from the appropriate agency in order to receive a salvage value assessment rather than having the equipment appraised under the standard valuation rules.

Tennessee Code Annotated Section 67-5-604 provides in relevant part as follows:

* * *

> (b)(1) The value of qualified pollution control facilities shall, for the purpose of ad valorem property taxation, be deemed to be its salvage value, that is, the estimated fair market value, if any, which could be realized upon the voluntary sale or other disposition of such property when it can no longer be used for the purpose for which it was designed. For purposes of this section, salvage value shall never exceed one-half percent (.5%) of the acquisition value of such facilities. *Facilities may qualify for the valuation provided herein by obtaining a certificate from the department of environment and conservation, or by such county boards of health as it may designate*.
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> * * *
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> (3) *For purposes of ad valorem taxation, the effective date of the valuation provided in this section shall be January 1, following the date of application.*

[Emphasis Supplied]

The administrative judge finds that by its express terms, Tenn. Code Ann. § 67-5-604 requires a taxpayer to obtain a certificate from the Department of Environment and Conservation or its designee in order to have its equipment appraised at salvage value. The administrative judge finds that he does not have equitable powers to waive such a statutory requirement. See *Trustees of Church of Christ* (Obion Co., Exemption Claim) wherein the Assessment Appeals Commission ruled that it could not waive the statutory deadline for filing an exemption application reasoning in pertinent part as follows:

[5] Penn's Post-Hearing Memorandum at 5.

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Final Decision and Order at 2. Like Judge Loesch, the undersigned administrative judge finds that obtaining a certificate from the Department of Environment and Conservation or its designee constitutes a non-waivable prerequisite for having pollution control equipment appraised at its salvage value.

VI. Property Held by the Industrial Development Board

The administrative judge finds that certain property acquired in 2000 by the Board and valued at $1,333,489 should be reported in Part III of Penn's property schedule rather than in Part II, Group 5, where it was erroneously listed in the Schedule for 2002. The administrative judge finds that these assets were owned by the Board and leased to Penn more than a year before January 1, 2002, and, they have continuously remained the property of the Board. Therefore, they were owned by the Board on January 1, 2002, and thus, as of that date, were exempt from taxation. Tenn. Code Ann. § 7-53-305.

VII. Bankruptcy

The Assessor claims that all of the property supposedly covered by payment-in-lieu-of-tax agreements with the Board should be taxed because its ownership reverted to Penn as a result of its bankruptcy filing on July 9, 2001.

The administrative judge finds that the leases entered into with the Board *after* entry of the bankruptcy Confirmation Order on July 19, 2002, could not have been affected by a bankruptcy which had already been resolved. In contrast, the administrative judge finds that the leases entered into *before* entry of the bankruptcy Confirmation Order were indeed subject to change during the bankruptcy.

The Assessor claims and Penn admits that it failed to list its leases with the Board as leases to be assumed or rejected during the bankruptcy, and the Board failed to submit any proof of claim as a creditor under the leases. Failing to submit a proof of claim does allow the debtor to shed its obligation to pay a debt; however, it can only shed an obligation that it has, and at the time of the bankruptcy, Penn was "current" on all of its payment obligations under these leases. In this case, the debtor, Penn, held only a leasehold interest in the property. Whether this leasehold interest were maintained or rejected by Penn, *title remained in the Board*. The bankruptcy of a lessee under a lease agreement cannot divest

the lessor of its fee interest in its own property. At most, the bankruptcy affects the continuation of the lease agreement.

In this case the leases signed *before* entry of the Confirmation Order have continuously remained in effect, as evidenced by the actions of both parties. Penn has continuously maintained possession of the property and has continued its payments to the Board and its payments-in-lieu-of-tax in compliance with the terms of the Board's lease. Moreover, even if these leases had expired, the administrative judge finds it is the law in Tennessee that when a previous contract expires and the parties continue to operate as if bound by the previous agreement, the agreement is enforced as an implied contract. *Delzell v. Pope*, 200 Tenn. 641 (Tenn. 1956). In fact, unlike in *Delzell*, in this case both parties agree that the leases remain in effect. Since both parties agree that the leases remain in effect and have acted consistent with this understanding *both* before and since the bankruptcy, the leases are upheld as a matter of law.

The administrative judge finds that whether the bankruptcy divested Penn of its lease interest in the property, thus subjecting the property in question to taxation was a matter to be determined by the Bankruptcy Court. The administrative judge finds that since this issue was not raised before the Bankruptcy Court, the Assessor has lost all opportunity to nullify the leases in connection with the bankruptcy proceeding, which leases were freely entered into and continue to be followed by the parties.

VIII. Other Valuations

The Assessor asserts that the ownership and valuation reported by Penn in its bankruptcy filing; its franchise and excise tax return; and its payment-in-lieu-of-tax agreements all serve to prove that Penn has been divested of ownership of the affected property and that the fair market value of this property is higher than what is indicated by the Appraisal. In both its filings in the U.S. Bankruptcy Court and its 2000-2001 Tennessee franchise and excise returns, Penn listed the property in question as owned by it rather than leased by it from the Board, and in its bankruptcy schedules and payment-in-lieu-of-tax agreements, Penn listed the value of the Property as higher than the fair market value conclusion of the Appraisal for 2002.

Property that is subject to a payment-in-lieu-of-tax agreement may be treated as owned property by the lessee under generally accepted accounting principles, and such accounting does not change the actual ownership of the property. Ownership changes hands only through the transfer of title, and incorrectly reporting ownership (e.g., to the Tennessee Department of Revenue) cannot alter this legal conclusion.

The fair market value of the property in question, likewise, cannot be determined merely by the reporting of some value. Instead, for property tax purposes, value must be

established by the Assessor's standard valuation method, or it must be supported by evidence derived from expert opinion based upon an alternate accepted appraisal methodology – a nonstandard value.

The administrative judge finds that Mr. Mickle's appraisal cannot be rejected simply because Penn reported differing, unsubstantiated values, at different points in time, to any number of different parties, for whatever purpose.

IX. Lease Amendment and Lease Date

A. Date of Lease's Effect on Taxation

The property conveyed to the Board in December 2001 is not taxable in 2002 because property owned by the Board is exempt from taxation. The property in question is listed on Exhibit A to the Bill of Sale dated December 28, 2001 and attached to the Affidavit of Angelo E. Cajili as Exhibit A.

Property owned by the Board is exempt from taxation because the Board is an industrial development corporation. "[T]he corporation and all properties at any time owned by it . . . shall be exempt from all taxation in the state of Tennessee." Tenn. Code Ann. § 7-53-305. Personal property tax is assessed to the owner of the property as of January 1. Tenn. Code Ann. § 67-5-504(a). The aforementioned Bill of Sale conveyed title of the specified property to the Board prior to January 1, 2002, as stipulated to by the Assessor. Since title to the property was transferred to the Board prior to January 1, 2002, and has remained property of the Board ever since it took title, the administrative judge finds that the property was owned by the Board on that date; and it was, therefore, exempt from taxation on that date.

The Assessor claims that the property owned by the Board was taxable to Penn because the lease of this property back to Penn was not completed until January 19, 2002. The Assessor relies on Tenn. Code Ann. § 67-5-502(c), which states, "Other leased personal property shall be classified according to the lessee's use and assessed to the lessee, *unless such property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes.*" Tenn. Code Ann. § 67-5-502(c). (emphasis added.) The Assessor maintains that since the property was not subject to a fully executed lease, on January 1, 2002, the property was taxable to the lessee under this section. If the lease did not occur until January 19, 2002, however, there was no lessee on January 1, and this statute is inapplicable. Given such an understanding of the facts, on January 1, 2002, the Board simply held title to the property, and no lease existed; therefore, Tenn. Code Ann. § 7-53-305 applied, and the property was exempt from taxation because it was owned by an industrial development corporation.

Furthermore, the administrative judge finds that even if the statute cited by the Assessor had applied, the property was already subject to a payment-in-lieu-of-tax agreement on January 1, 2002. The agreement, constituted by the Penn PILOT Application, the Board's approval of same, and the minutes of the approval meeting had all occurred before January 1, 2002, as had the transfer of the title of the property to the Board. (Affidavit of Dale R. Fannin ¶ 6.) Accordingly, even under the statute cited, the subject property would not be assessed to Penn, the lessee.

The Assessor, in her hearing memorandum, presented three other authorities for her position, which are all inapplicable as well: Tenn. Att'y Gen. Op. No. 83-355 (1983); Tenn. Att'y Gen. Op. No. 97-049 (1997); and *Edwin B. Raskin Co. v. Doric Building Co.*, 821 S.W.2d 948 (Tenn. Ct. App. 1991). The administrative judge finds that Tenn. Att'y Gen. Op. No. 83-355 actually supports Penn's position, as that Opinion states in pertinent part:

> All property obtained and owned by an industrial development corporation, therefore is entitled to tax exemption pursuant to T.C.A. § 7-53-305(a) and, *if* leased by the industrial development corporation to third parties, is eligible for any payment in lieu of taxes program properly authorized by the County legislative body.

Tenn. Att'y Gen. Op. No. 83-355 (1983) at *3 (emphasis added). By the plain wording of the Opinion, it is the fact of Board ownership which renders the property tax exempt, not its leaseback to Penn. The leaseback merely serves to trigger the Board's establishment of a payment-in-lieu-of-tax to be made by Penn. Accordingly, the administrative judge finds subject property was exempt from taxation on January 1, 2002, and an agreement providing for a payment-in-lieu-of-tax was fully executed by the end of that month, such agreement being the PILOT lease referred to by the Assessor.

B. Lease Amendment

The Assessor claims that a lease which acquires or adds new property not included in the original lease is a new lease because the rights and obligations of the parties have changed. The Assessor relies upon *Raskin Company v. Doric Building Company*, 821 S.W. 2d 948 (Tenn. Ct. App. 1991) for this proposition. In *Raskin*, however, the court found that the "language of the 1987 Lease does not indicate that it was intended to be an extension of the 1973 Lease." *Raskin Company v. Doric Building Company*, 821 S.W. 2d 948, 951 (Tenn. Ct. App. 1991). The administrative judge finds that in Penn's case, the language of the agreement identifies the transaction as a lease "amendment" and not a new lease. (Exhibit B to the Affidavit of Angelo Cajili.) Furthermore, *Raskin* did not involve a payment-in-lieu-of-tax agreement.

Tenn. Att'y Gen. Op. No. 97-049 (1997), also cited by the Assessor, raises the question whether an extension of a payment-in-lieu-of-tax agreement could result in a

transfer of property from the Board to the taxpayer at the end of an old lease and a reacquisition of the property by the Board with a new lease. The opinion relies on *Raskin* to determine that the language of the lease extension will be an important factor in deciding whether the lease is an extension or a new lease. Tenn. Att'y Gen. Op. No. 97-049 (1997) at *4. The administrative judge finds that the Attorney General opinion differs from the case at hand in that it involves an extension of a payment-in-lieu-of-tax lease rather than an amendment to a previous lease which does not extend the terms of the lease, but only amends the property subject to the lease. In Penn's case, since the terms of the lease were not extended by the subsequent document, the original lease could not have expired and resulted in the property reverting to the taxpayer. (Affidavit of Dale R. Fannin ¶ 7.)

X. Holding

For the reasons stated above, the administrative judge finds that Penn's tangible personal property other than the raw materials (Group 8 assets) should be valued at $16,752,000 based upon the appraisal. The administrative judge finds that the raw materials should be valued at $3,140,166 as stipulated by the parties.

The administrative judge further finds that neither Penn's bankruptcy nor the March 12, 2003, Amendment to the December 28, 2000 Bill of Sale is found to have transferred back to Penn title to the property originally conveyed to the Board by the Bill of Sale dated December 28, 2000, and the Bill of Sale dated December 28, 2001. Since this property, valued at $14,718,937, was owned by the Board (and was properly reportable by the taxpayer in Part III of the Schedule) as of January 1, 2002, it is not taxable, pursuant to Tenn. Code Ann. § 7-53-305. Accordingly the fair market value of Penn's taxable tangible personal property for 2002 is determined to be $19,892,200 after rounding, with an assessed value of $5,967,660.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2002:

APPRAISED VALUE	ASSESSMENT
$19,892,200	$5,967,660

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12

of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 23rd day of February, 2006.

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MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Harry J. Skefos, Esq.
Brian Kelsey, Esq.
Thomas Williams, Esq.
Tameaka Stanton-Riley, Appeals Manager